OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 20 March 2003 [1]

I — Introductory remarks

1. These proceedings are concerned with ascertaining whether a specific national law complies with the principles of proportionality, effectiveness and adequate judicial protection of the rights conferred on individuals, which are laid down in the Treaty and developed in the case-law of the Court of Justice.

II — Relevant legislation

A — *Community law*

2. Legislation relevant in this case includes Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (hereinafter: Directive 1999/5) [2] and Decision No 3052/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (hereinafter: Decision No 3052/95). [3]

1. Directive 1999/5

3. The aim of Directive 1999/5 as defined in Article 1 thereof is to establish a regulatory framework for the placing on the market, free movement and putting into service in the Community of radio equipment and telecommunications terminal equipment.

4. Article 2(c) defines radio equipment as 'a product, or relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radiocommunication'.

1 — Original language: German.

2 — OJ 1999 L 91, p. 10.

3 — OJ 1995 L 321, p. 1.

5. Article 3 lays down the essential requirements applicable to all apparatus. Accordingly, radio equipment must be so constructed 'that it effectively uses the spectrum allocated to terrestrial/space radiocommunication and orbital resources so as to avoid harmful interference'.

6. Article 5 provides that, where apparatus meets the relevant harmonised standards or parts thereof whose reference numbers have been published in the *Official Journal of the European Communities*, there is compliance with those of the essential requirements referred to in Article 3 as are covered by the said harmonised standards or parts thereof.

7. Article 6(1) provides:

'Member States shall ensure that apparatus is placed on the market only if it complies with the appropriate essential requirements identified in Article 3 and the other relevant provisions of this Directive when it is properly installed and maintained and used for its intended purpose. It shall not be subject to further national provisions in respect of placing on the market.'

8. Article 6(4) provides as follows:

'In the case of radio equipment using frequency bands whose use is not harmonised throughout the Community, the manufacturer or his authorised representative established within the Community or the person responsible for placing the equipment on the market shall notify the national authority responsible in the relevant Member State for spectrum management of the intention to place such equipment on its national market.

This notification shall be given no less than four weeks in advance of the start of placing on the market and shall provide information about the radio characteristics of the equipment (in particular frequency bands, channel spacing, type of modulation and RF-power) and the identification number of the notified body referred to in Annex IV or V.'

9. The provisions of Article 7(1) and (2) read:

'1. Member States shall allow the putting into service of apparatus for its intended purpose where it complies with the appropriate essential requirements identified in Article 3 and the other relevant provisions of this Directive.

2. Notwithstanding paragraph 1, and without prejudice to conditions attached to authorisations for the provision of the service concerned in conformity with Community law, Member States may restrict the putting into service of radio equipment only for reasons related to the effective and appropriate use of the radio spectrum, avoidance of harmful interference or matters relating to public health.'

10. Article 8(1) reads:

'Member States shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking referred to in Annex VII, which indicates its conformity with all provisions of this Directive, including the conformity assessment procedures set out in Chapter II. This shall be without prejudice to Articles 6(4), 7(2) and 9(5).'

11. Article 9(1) provides:

'Where a Member State ascertains that apparatus within the scope of this Directive does not comply with the requirements of this Directive, it shall take all appropriate measures in its territory to withdraw the apparatus from the market or from service, prohibit its placing on the market or putting into service or restrict its free movement.'

12. Under Article 12 of Directive 1999/5 apparatus complying with all relevant essential requirements is to bear the CE conformity marking referred to in Annex VII.

13. Article 19(1) provides:

'Member States shall not later than 7 April 2000 adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof. They shall apply these provisions as from 8 April 2000...'.

2. Decision No 3052/95

14. Article 1 of the decision provides:

'Where a Member State takes steps to prevent the free movement or placing on

the market of a particular model or type of product lawfully produced or marketed in another Member State, it shall notify the Commission accordingly where the direct or indirect effect of the measure is:

— a general ban on the goods,

— a refusal to allow the goods to be placed on the market,

— the modification of the model or type of product concerned before it can be placed or kept on the market, or

— withdrawal of the goods from the market.'

15. Article 3 of the decision provides:

'1. The notification requirement laid down in Article 1 shall apply to measures taken by the competent authorities of the Member States so authorised, with the exception of judicial decisions.

Where a particular model or type of product is the subject of several measures, adopted under identical substantive conditions and procedures, only the first of those measures shall be subject to the notification requirement.

2. Article 1 shall not apply to:

— measures taken solely in pursuance of Community harmonisation measures,

— measures notified to the Commission under specific provisions,

— draft measures notified to the Commission under specific Community provisions,

— measures preparing or leading up to the main measure referred to in Article 1,

such as preventive measures or investigations,

— measures relating solely to the protection of public morality or public order,

— measures relating to second-hand goods which, with time or use, have become unsuitable for being placed or kept on the market.

3. The initiation of proceedings for judicial review of such a main measure shall under no circumstances result in suspension of the application of Article 1.'

B — *National law*

16. The essential provisions of Italian law are contained in the Codice Postale established by Presidential Decree No 156 of 29 March 1973 ('the Postal Regulations'; hereinafter: Codice Postale)[4] and in Law No 689 of 24 November 1981 concerning penalties for administrative offences, additional consequences and the relevant appeal procedures (hereinafter: Law No 689/81).[5]

1. The Codice Postale

17. Article 398 provides:

'It is prohibited to build or import into the national territory for commercial purposes, or to use or operate in any capacity electrical or radio-electrical equipment or systems or electricity transmission lines which do not comply with the standards laid down for the prevention and elimination of interference with the transmission and reception of radio signals.

Those standards, which shall also govern the conformity assessment procedure, shall be enacted by way of decree of the Minister for Post and Telecommunications, acting together with the Minister for Industry, Trade and Handicraft, in accordance with the directives of the European Community.

4 — Decreto del Presidente della Repubblica DPR, Codice Postale, *GURI Supplemento Ordinario* No 113, 3 May 1973.

5 — *GURI S.O.* No 329, 30 November 1981.

The placing on the market and importation for commercial purposes of the equipment referred to in the first paragraph are conditional upon the issue of a certificate, marking or attestation of compliance or upon production of a declaration of compliance in accordance with rules to be established by decree as referred to in the second paragraph.

The bodies and persons authorised to endorse stamps or issue certificates attesting to compliance as provided for in the preceding paragraph shall be appointed by decree of the Minister for Post and Telecommunications, acting together with the Minister for Industry, Trade and Handicraft.'

18. The standards referred to in the second paragraph of Article 398 are set out in the Ministerial Decree of 15 July 1977[6] (as amended by Ministerial Decree of 8 November 1996[7]).

19. Article 399 of the Codice Postale provides for a pecuniary penalty in the event of non-compliance with Article 398 thereof.

2. Law No 689/81

20. Articles 18 to 23 of Law No 689/81 lay down the procedural rules governing investigations, penalties and legal remedies.

21. Article 20(4) of Law No 689/81 provides:

'Goods the manufacture, use, shipping, storing or selling of which constitutes an administrative offence shall consistently be confiscated even if an interim order has not been issued by the courts.'

22. As far as those provisions are concerned, the Giudice di Pace di Genova (District Court, Genoa) refers to the interpretation adopted by the Corte di Cassazione (Court of Cassation). According to that case-law, appeals lodged in the event of administrative offences are restricted to ascertaining the lawfulness of the penalty imposed. Third parties may not participate in such appeals either as voluntary interveners or upon third-party notice or in the context of an action to enforce a guarantee. Since appeals are restricted to ascertaining the lawfulness of the penalty imposed on the person who committed the administrative offence, it follows that, where there is a chain of sales and purchases, the first seller cannot assert directly against the administrative authorities that the product seized from the purchaser meets the legal requirements.

23. The Italian Republic failed to transpose Directive 1999/5 within the period prescribed. However, in May 2000 the Ministry of Communications published a circular

6 — *GURI* No 226, 20 August 1977.
7 — *GURI* No 274, 22 November 1996.

which provides that, for the purposes of placing on the market and putting into service, the services [of the Ministry of Communications] have to comply with the provisions of Directive 1999/5.

III — Facts and main proceedings

24. It is apparent from the documents in the case that Safalero Srl (hereinafter: Safalero) is an undertaking which manufactures radio-controlled, flying, scale model aircraft powered by internal combustion or electric motors. It manufactures the models but not the radio control units needed to fly them. The radio control units are not manufactured in Italy; they are imported from other EC Member States and subsequently distributed by Safalero, which sells the complete kit comprising the model, motor and radio control unit to a large number of retail outlets both in Italy and abroad.

25. On 8 February 2000, officers of the Polizia Postale (Postal Police) visited the registered office of the undertaking Vitale, in Genoa, where they seized seven radio control units, purchased by Vitale from Safalero after they had been imported by Safalero from other Member States, on the ground that the radio control units did not bear the type-approval stamp required by Article 398 of the Codice Postale. Vitale appealed against that measure to the Prefetto di Genova (Genoa Prefect). However, on 26 April 2000 the Prefetto imposed an administrative fine of ITL 30 000 on Vitale and ordered that the goods be confiscated and destroyed. Vitale has not taken any action against those measures.

26. By reports of 17 February 2000 the Polizia Postale alleged that Safalero had infringed Articles 398 and 399 of the Codice Postale, and imposed a separate administrative fine of ITL 100 000 for each of the three infringements found.

27. On 18 April 2000 Safalero lodged an appeal against those decisions with the Prefetto di Genova and applied for the return of the goods seized. On 21 April 2000 the Prefetto dismissed the appeal and the application for the return of the goods, and imposed an administrative fine of ITL 300 000. On 22 June 2000 Safalero brought an action before the Giudice di Pace di Genova, claiming that the decision to seize the goods constituted a general ban on the goods within the meaning of Decision No 3052/95 which had to be notified to the Commission. Moreover, the decision to seize the goods was contrary to the Community principle of proportionality.

28. According to the order for reference, the apparatus concerned meets the required standards, as the Prefetto di Genova himself has acknowledged.

IV — Questions referred for a preliminary ruling

29. Reference has been made to the Court of Justice of the European Communities by order of the Giudice di Pace di Genova, of 4 January 2001, registered at the Court on 11 January 2001, for a preliminary ruling in the dispute between Safalero and Prefetto di Genova on the following questions:

'(1) Are the rules on procedure and on sanctions for administrative offences laid down by Law No 689 of 24 November 1981 compatible with the principles of proportionality, effectiveness and adequate legal protection of the rights conferred by Community law on individuals, laid down in the Treaty and/or set out and defined in the case-law of the Court of Justice, where:

— the offender cannot institute court proceedings against a measure authorising seizure adopted by the administrative authorities until the administrative authorities themselves, without being constrained to observe procedural time-limits, have applied to the courts for an interim order or a confiscation order;

— a person directly and individually concerned by a measure adopted by the administrative authorities is not allowed to institute court proceedings where the measure itself is addressed to other persons;

— a person directly and individually concerned by a measure adopted by the administrative authorities and addressed to other persons is not allowed to participate, even as a voluntary intervener, in opposition proceedings brought against such a measure;

— provision is made, with no possibility for a court to make a different and discretionary assessment, for the additional penalty of confiscation of the goods where the offence is purely administrative, the main penalty being pecuniary and involving payment of a sum of money which may be quite modest?

(2) Do Articles 10 and 249 of the Treaty preclude Member States from adopting measures contrary to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommuni-

cations terminal equipment and the mutual recognition of their conformity:

— during the period prescribed for the transposition of that directive;

— after expiry, without transposition, of that period?

If the answer to this question is in the affirmative, what is the meaning of the Community concept of "measure liable seriously to compromise the result prescribed by the directive"?'

V — Assessment of the questions referred for a preliminary ruling

30. By letter of 20 June 2002, the Court of Justice asked the referring court if it still intended to pursue the questions it had referred in the light of the judgment in *Radiosistemi*. [8]

8 — Joined Cases C-388/00 and C-429/00 [2002] ECR I-5845.

31. By letter of 5 August 2002, the Giudice di Pace notified the Court that it had decided by order of 30 July 2002 to continue with the first question referred.

A — *Admissibility of the questions referred for a preliminary ruling*

1. Submissions of the parties

32. The Italian Government considers the question(s) referred to be inadmissible in that it does not/they do not refer to any specific secondary Community legislation requiring interpretation by the national court.

33. The matter of the lawfulness of the measure authorising seizure arose, in its view, in the context of different proceedings, namely those involving Vitale and not those which have led to the current proceedings for a preliminary ruling. Were the Court to hold that the offender may intervene in the court proceedings, the referring court would have no power to influence the measure authorising seizure and the judgment delivered by the Court of Justice would have no repercussions on any of the pending proceedings.

34. The French Government takes the view that only the second indent of the first question referred is actually admissible because the other indents of the question relate to hypothetical situations or only concern Vitale.

35. The Commission takes the view that answering the third and fourth indents of the first question referred is of no relevance to a decision in the actual dispute arising in the main proceedings. It, on the other hand, considers the first and second indents of the first question referred to be admissible. As regards the first indent, the Commission pointed out at the hearing that an interest in challenging a measure authorising seizure can arise even after confiscation.

2. Assessment

36. According to the case-law of the Court, the Court may 'refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it'. [9]

37. In the present case it is necessary to examine whether it is quite obvious that the interpretation of Community law sought by the referring court bears no relation to the actual nature of the case or to the subject-matter of the main action. [10]

38. The third indent of the first question referred relates to a situation in which a person 'directly and individually' concerned by a measure adopted by the administrative authorities and addressed to other persons cannot participate, even as a voluntary intervener, in court proceedings brought by those other persons against such a measure.

39. Since Vitale has not brought court proceedings in this instance against the measure in question, proceedings in which Safalero could participate as a third party do not even exist. Whether or not such a right to participate is required by Community law is, therefore, a hypothetical question that the Court does not have to answer.

40. The fourth indent of the first question referred concerns the situation where provision is made, without it being possible for a court to make a different and unfettered

9 — Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 19, and Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39.

10 — See, for such circumstances, Case 126/80 *Salonia* [1981] ECR 1563, paragraph 6, and order in Case C-286/88 *Falciola Angelo* [1990] ECR I-191, paragraph 8 et seq.

assessment, for the additional penalty of confiscation of the goods in the event of a purely administrative infringement, the main penalty for which is pecuniary and involves payment of a relatively modest sum of money.

41. Since the main action similarly does not concern the additional penalty of confiscation, it is likewise not permissible for the Court to give an answer to the fourth indent relating to that matter.

42. Consequently, only the first two indents of the first question referred are to be answered. Of course, those parts of the question are to be construed as relating to the interpretation of Community law rather than the compatibility of national legislation with Community law.

B — *The first — and henceforth the only — question referred for a preliminary ruling*

43. These proceedings are about determining whether the provisions of Law No 689/81 are compatible with the principles of proportionality, effectiveness and adequate judicial protection of the rights conferred by Community law on individuals.

44. As the French Government rightly submits, the concept of direct and individual concern, as indeed it appears in the question referred, is misleading and inappropriate because it is relied on in the context of proceedings brought before administrative authorities of a Member State.

1. Submissions of the parties

45. In Safalero's view, importers of radio control units also have a legitimate interest in bringing proceedings against a measure authorising the seizure of goods from a retailer because they would also feel the negative impact of such a measure. It argues that their position on the market would be undermined as a result of a failure to place goods on the market. They would also incur the risk of being taken to court by the retailers.

46. Safalero adds that the provisions at issue in this case, as they are interpreted by

the Corte di Cassazione, are contrary to the principle of effective legal protection. Article 20(4) of Law No 689/81 made compulsory confiscation a general principle. The seizure, let alone the confiscation, of goods which, although meeting the required standards, still did not bear the corresponding type-approval stamp was a measure having equivalent effect for the purposes of Article 28 EC. In view of the insignificance of the infringement, those measures were disproportionate.

47. The procedural rules laid down in Law No 689/81 were therefore contrary to Community law.

48. The Italian Government proceeds from the premiss that the provisions at issue reflect the broad scope enjoyed by the Member States with regard to penalties. Community law, in its view, does not restrict that scope, given that this case does not involve national rules on procedure which are designed to meet Community law objectives. The safeguarding of Safalero's right of due process is not the issue here because the proceedings are brought against another person, namely Vitale, whose offences are the subject-matter of the proceedings. The criminal and administrative criminal responsibility are strictly personal. In this case two separate infringements were committed by two separate undertakings in respect of one and the same product.

49. The view held by the French Government is that this case is different in several aspects from the *Radiosistemi* case. Legal protection, as it is afforded by Italian law, meets the requirements of Community law because various means of obtaining redress were available to Safalero, enabling it to follow through its claims.

50. The Commission considers that Law No 689/81 offends against the principle of effective legal protection in so far as there is no possibility whatsoever of legal protection in the context of the first indent of the question. The fact that persons other than those to whom the measure authorising seizure is addressed are not allowed to bring an action constitutes an additional restriction inasmuch as the concept of 'interessati' is interpreted restrictively.

51. Under Community law on the other hand, any person suffering damage as a result of the measure must be granted access to judicial protection. It is for the national court to assess, on a case-by-case basis, whether there is *locus standi*.

52. The Commission's view is that the provisions of Law No 689/81 also contradict the principle of effective legal protection inasmuch as a person directly concerned by a measure authorising seizure may not bring an action where the measure adopted is addressed to other persons and, thus, where the national legislation in force precludes the raising of an action by persons other than those directly concerned by the measure in question. However, the principle of proportionality is irrelevant.

2. Assessment

53. It is no longer necessary to examine whether the rules providing for a prohibition, the infringement of which has resulted in penalties imposed by the Italian authorities, are consistent with Community law. The Court of Justice has already given a negative answer to that question in *Radiosistemi*. A provision of national law which imposes a specific ban is contrary to Community law. [11]

54. Similarly, the issue of whether penalties imposed on account of an infringement of a national provision which is contrary to Community law are consistent with Community law has already been resolved. Indeed, in accordance with the case-law of the Court borne out in *Radiosistemi*, 'penalties, be they criminal or otherwise, involving national restrictive measures which have been recognised as being contrary to Community law are as incompatible with Community law as the restrictions themselves'. [12]

55. 'For this reason, a system of penalties intended to ensure compliance with national provisions which are contrary to Community provisions must be held to be contrary to Community law, without there being any need to examine whether or not it meets the tests of non-discrimination and proportionality.' [13]

56. Furthermore, the connection with Community law, which is necessary for applying the standard of legal protection laid down by that law, exists in the circumstances of this case. Thus it is common ground, in the light of the judgment in *Radiosistemi* in any event, that Safalero enjoys rights deriving from Community law. It can therefore rely on the directly applicable provisions of Directive 1999/5 and, before expiry of the period

11 — Cited in footnote 8.

12 — Cited in footnote 8, paragraph 78; cf. also Case 179/78 *Rivoira and Others* [1979] ECR 1147, paragraph 14, and Case 269/80 *Tymen* [1981] ECR 3079, paragraphs 16 and 17.

13 — *Radiosistemi* (cited in footnote 8), paragraph 79.

prescribed for transposing the directive as well as afterwards as regards the non-harmonised sphere, on the free movement of goods.

57. The two indents of the question which are admissible in this case each relate to different circumstances in which there is no right of action under prevailing Italian law, namely before an interim order or a confiscation order has been issued (first indent), and where the measure adopted is addressed to other persons (second indent).

(a) First indent of the question

58. The answer to the first indent of the question lies in the principle of effective legal protection, that is to say, in the requirement of judicial control which stems from the constitutional traditions common to the Member States and is enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. [14]

14 — Case C-269/99 *Kühne and Others* [2001] ECR I-9517, paragraph 57, Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 46, Case C-226/99 *Siples* [2001] ECR I-277, paragraph 17, and Case C-424/99 *Commission* v *Austria* [2001] ECR I-9285, paragraph 45.

59. Account should additionally be taken of the following consistent case-law of the Court: 'However, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).' [15]

60. Referring specifically to the capacity to bring an action, the Court has held that while it is, 'in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, Community law nevertheless requires that the national legislation does not undermine the right to effective judicial protection'. [16]

15 — Case C-453/99 *Courage* [2001] ECR I-6297, paragraph 29, and Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 27. Cf., moreover, Joined Cases C-279/96 to C-281/96 *Ansaldo Energia* [1998] ECR I-5025, paragraphs 16 and 27, and Case C-326/96 *Levez* [1998] ECR I-7835, paragraph 18.

16 — Joined Cases C-87/90, C-88/90 and C-89/90 *Verholen and Others* [1991] ECR I-3757, paragraph 24; cf. Case 222/84 *Johnston* [1986] ECR 1651 and Case 222/86 *Heylens and Others* [1987] ECR 4097.

61. As the situation stands, the provisions of Italian law which are relevant in the main proceedings, in particular Article 22 of Law No 689/81, demonstrate a special feature in that they do not provide for any form of adequate legal protection for the person affected by the measure: they do not, for example, set a time-limit within which the competent authority has to give notification of the interim order. It would, furthermore, be necessary to ensure that the person concerned has a means of obtaining redress not merely against the measure authorising confiscation but also against the measure authorising seizure.

(b) Second indent of the question

62. The fact that two entirely separate sets of proceedings falling within the scope of administrative criminal law were instituted in the main action — one against Safalero and the other against Vitale — does not in itself make the case against Safalero having a right to rely on legal protection in the action brought against Vitale. The second indent concerns just such a situation.

63. It also needs to be established at the outset what group of persons in such circumstances is to be afforded the means provided by Community law to enjoy legal protection. It is therefore essential to define the scope of the group of persons entitled under Community law to bring an action in administrative criminal proceedings. It must, therefore, be ascertained whether legal protection is to be afforded only to the person to whom a penalty is directly addressed or, additionally, to certain other persons.

64. The concept of 'other persons' used in this context is inappropriate in so far as it is too broad and too imprecise. After all, it covers all those to whom the penalty is not directly addressed and does not make any specific distinction between different sets of circumstances. Any special feature characterising the situation of other persons is consequently disregarded.

65. The Italian law forming the subject-matter of these proceedings does not — at least in the manner that it appears to be applied in practice — make any specific distinctions, nor does it in particular allow the specific circumstances of other persons to be examined. Such provisions do not therefore allow the Italian authorities either to examine whether or not other persons might after all enjoy a legal position protected by Community law. On the contrary, Italian law as it stands is based

on the principle that other persons do not, in general, merit protection under Community law.

66. Although Community law does not require that means of legal protection must be available to all other persons in proceedings brought against another person, a contradiction of the principle of effective legal protection none the less arises in that national law does not, in principle, provide for any means of legal redress for persons other than those against whom the action has been brought. Indeed, Community law in some circumstances requires that the rights of such other persons also be protected.

67. It is therefore necessary in the following considerations to examine whether, in circumstances such as those arising in the main action, the conditions have been met for other persons, that is to say persons other than those against whom proceedings have been brought, also to be granted certain means of legal protection.

68. In this context Safalero rightly points, first of all, to the economic implications of the measures imposed by the authorities. Undertakings which have had their goods seized are affected in reality by that measure in terms of their position on the market concerned. Indeed, even the seizure, let alone the prospect of the goods being destroyed, has a deterrent effect on purchasers, that is to say on retailers. After a measure of that kind, such undertakings would probably only be able to sell a fraction, if any, of its goods. Added to that is the risk of being sued by retailers which have already purchased such goods.

69. Secondly, from a legal viewpoint, Safalero is not, as it were, a bystander to the action either. There is a contractual relationship between Safalero and Vitale, as well as contractual relationships with other retailers, indicating that Safalero is closely linked to the direct addressee of the penalty.

70. Failure to grant any means of obtaining legal redress to such persons concerned, namely Safalero in the main action, renders it virtually impossible for them to exercise the rights accruing to them under the principle of the free movement of goods or under Directive 1999/5. After all, under the Italian legislation in force, a person concerned is dependent on the goodwill of the direct addressee, that is to say dependent on whether or not the addressee decides to bring an action.

VI — Conclusion

71. In the light of all of the foregoing, I propose that the Court should answer the question referred for a preliminary ruling as follows:

The principle of effective legal protection is to be construed as precluding, in circumstances such as those arising in the main action, national provisions under which

— the offender cannot institute court proceedings against a measure authorising seizure adopted by the administrative authorities until the administrative authorities themselves, without being constrained to observe procedural time-limits, have applied to the courts for a default summons or a confiscation order;

— a person concerned by a measure adopted by the administrative authorities who enjoys rights deriving from Community law cannot institute court proceedings where that measure is addressed to other persons.